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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/853,014      | 05/10/2001  | Peter Schafer        | A34196 PCT USA-A    | 5113             |

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| EXAMINER |
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BURCH, MELODY M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3613     |              |

DATE MAILED: 02/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/853,014             | SCHAFFER ET AL.     |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Melody M. Burch        | 3613                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). .

#### Status

- 1) Responsive to communication(s) filed on 07 December 2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 May 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the processor being a part of one electronic stability system as claimed in lines 1-2 of claims 16 and 21 must be shown or the feature(s) canceled from the claim(s). In figures 1 and 2 Processor 1 and Electronic Stability System 8 are shown as separate entities with separate element numbers. No new matter should be entered.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8-11 and 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claims 8 and 20. Claims 8 and 20 recite the limitation "said clamping device" in line 2 of claim 8 and in lines 6-7 from the bottom of claim 20. There is insufficient antecedent basis for this limitation in the claim. The phrase "said clamping device"

limits the clamping device to a single clamping device whereas the previous recitation of "at least one clamping device" claimed earlier in the claims includes the possibility of a plurality of clamping devices.

Re: claim 10. Claim 10 recites the limitation "the accelerator" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Re: claim 11. Claim 11 recites the limitation "said accelerator" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 and 12-17 rejected under 35 U.S.C. 102(b) as being anticipated by EP-0798187.

Re: claims 1-4 and 12-16. EP-0798187 discloses a method for controlling a brake system of a vehicle wherein braking effect on the vehicle wheels is a function of brake pedal force exerted by the operator, the braking effect being enhanced by an adjustable braking force booster comprising: detecting dynamic conditions of operation of the vehicle or the actuation of brake pedal 1 via pedal stroke sensor 25, analyzing the dynamic conditions to detect a condition of vehicle instability as disclosed in col. 8 lines 43-46 in which the pedal operated quantity is compared to a threshold, and increasing

the force boosting effect of the braking force booster when the analysis indicates condition of the condition of vehicle instability as disclosed in col. 8 lines 50-54 and shown by step S150 in figure 4.

Re: claims 5 and 17. EP-0798187 discloses the step of monitoring via brake switch 23 to detect a condition wherein the operator may apply full braking and increasing the force boosting effect of the braking force booster when the monitoring indicates a condition wherein the operator may apply full braking.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6, 7, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP-0798187 in view of Sato. EP-0798187 teaches monitoring the operator's use of a pedal, as set forth above, but does not disclose the limitation of the pedal being an accelerator. Sato teaches the use of monitoring the operator's use of or more specifically the abrupt release of an accelerator pedal as disclosed in lines 1-2 of the abstract. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of controlling the brake system of EP-0798187 to have included a step of monitoring the operator's abrupt release of the accelerator pedal, as taught by Sato, in order to provide an alternate means of

determining the operator's intentions of applying brakes under unstable vehicle conditions.

9. Claims 8, 9, 20-22 rejected under 35 U.S.C. 103(a) as being unpatentable over EP-0798187 in view of Kircher et al.

Re: claims 8, 20, and 21. EP-0798187 discloses a method for controlling a brake system of a vehicle wherein braking effect on the vehicle wheels is a function of brake pedal force exerted by the operator, the braking effect being enhanced by an adjustable braking force booster comprising: detecting dynamic conditions of operation of the vehicle or the actuation of brake pedal 1 via pedal stroke sensor 25, analyzing the dynamic conditions to detect a condition of vehicle instability as disclosed in col. 8 lines 43-46 in which the pedal operated quantity is compared to a threshold, and increasing the force boosting effect of the braking force booster when the analysis indicates condition of the condition of vehicle instability as disclosed in col. 8 lines 50-54 and shown by step S150 in figure 4 and a processor 20, but does not specifically disclose the limitation of at least one clamping device responsive to an actuator for applying the braking force to the vehicle.

Kircher et al. teach in figure 1 the use of at least one clamping device or disc brake 1-4 responsive to an actuator M which as taught in col. 4 lines 20-23 presses the brake shoes of the disc brake from either side against a brake disc rotating on a wheel. It is maintained that such pressing action inherently overcomes free play of the clamping device or disc brake. Also, although not disclosed, it is obvious that in order for the method of controlling the braking system of EP-0798187 to function, there must

be an associated well-known brake structure such as a disc brake or drum brake associated with the system. Despite the silence of the inventors of EP-0798187 with respect to the specific brake structure associated with the system, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the brake structure associated with the brake system of EP-0798187, to have included a clamping device or disc brake responsive to an actuator, as taught by Kircher et al., in order to provide a means of realizing the braking effect of the brake system.

Re: claim 9 and 22. EP-0798187, as modified, teaches the step of monitoring via brake switch 23 to detect a condition wherein the operator may apply full braking and increasing the force boosting effect of the braking force booster when the monitoring indicates a condition wherein the operator may apply full braking.

10. Claims 10, 11, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP-0798187 in view of Kircher et al., and further in view of Sato. EP-0798187, as modified, teaches monitoring the operator's use of a pedal, as set forth above, but does not disclose the limitation of the pedal being an accelerator. Sato teaches the use of monitoring the operator's use of or more specifically the abrupt release of an accelerator pedal as disclosed in lines 1-2 of the abstract. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of controlling the brake system of EP-0798187 to have included a step of monitoring the operator's abrupt release of the accelerator pedal, as taught by Sato, in order to provide an alternate means of determining the operator's intentions of applying brakes under unstable vehicle conditions.

***Response to Arguments***

11. Applicant's arguments filed 12/7/01 have been fully considered but they are not persuasive.

Re: Drawing Objection. Although Applicant points to figure 3 as a showing of the processor being a part of the electronic stability system, Examiner maintains that the drawings do not clearly show the processor being a part of an electronic stability system. Examiner recommends encompassing element 1 and any other appropriate elements within a perforated box labeled electronic stability system. If such a drawing change is adopted, element 8 in figure 1 should be changed to read "electronic stability control unit" to correspond to the description in the specification and to clearly differentiate it from the claimed electronic stability system.

Re: 102/103 Rejections. Applicant argues that the independent claims call for detecting "dynamic conditions of a vehicle"; however, Examiner points out that the independent claims call for detecting "dynamic conditions of *operation* of said vehicle" as first claimed in line 4 of claim 1. The dynamic conditions of operation of the vehicle (or the depression of the pedal used to decelerate the vehicle) are clearly detected via stroke sensor 25 as disclosed in the braking system of EP-0798187. Examiner maintains the rejections to the claims as Applicant's arguments are not directed to the claimed limitations.

Additionally, Applicant argues that the Kircher reference does not provide an increase in braking force when vehicle instability is detected. Examiner notes that this argument is irrelevant since the Kircher reference is not utilized to provide the teaching of the braking force increasing when vehicle instability is detected. As discussed in paragraph 11 of the Office Action of paper no. 5, the Kircher reference is used to teach the limitation of at least one clamping device being responsive to an actuator for applying the braking force to the vehicle.

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Oberleitner can be reached on 703-308-2569. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mm3 2/1/02  
mmb  
February 1, 2002



PAUL N. DICKSON  
PRIMARY EXAMINER

2/6/02